

PILLSBURY WINTHROP SHAW PITTMAN LLP
RICHARD H. ZAITLEN #63283
STEPHEN BYERS #223330
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Telephone: (213) 488-7100
Facsimile: (213) 629-1033
Email: Richard.Zaitlen@Pillsburylaw.com
Email: Steve.Byers@Pillsburylaw.com

Attorneys for Plaintiff
NUSCIENCE CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NUSCIENCE CORPORATION, a
California corporation,

Plaintiff,

vs.

ROBERT HENKEL, an individual,
and ROBERT HENKEL d/b/a
DEUTROCELL, a business entity of
unknown form,

Defendants.

Case No. **CV 08-02661 GAF(FFMx)**

COMPLAINT FOR:

- (1) STATUTORY TRADE SECRET MISAPPROPRIATION UNDER CALIFORNIA CIVIL CODE § 3426;**
- (2) FEDERAL TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT § 43(a);**
- (3) UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200;**
- (4) FALSE ADVERTISING AND UNFAIR COMPETITION UNDER THE LANHAM ACT § 43(a);**
- (5) INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIPS**

Plaintiff, NUSCIENCE CORPORATION, ("NuScience" or "Plaintiff")
for its complaint avers as follows:

INTRODUCTION

This is a complaint for trademark infringement, false advertising, unfair competition, misappropriation of trade secret, and intentional interference with business relationships. Defendant ROBERT HENKEL (“Henkel”), or his business entity of unknown form, DEUTROCELL (“Deutrocell”), or both (collectively, “Defendants”) have misappropriated certain trade secrets owned by NuScience, attempted to use and/or sell them to others, and have used certain trademarks owned by NuScience to do so.

JURISDICTION AND VENUE

1. This is a civil action for trademark infringement arising under the Lanham Act, 15 U.S.C. § 1125 (a), pursuant to which this Court has jurisdiction under 15 U.S.C. §1121. This is also a civil action for relief and damages for false advertising arising under the Lanham Act, 15 U.S.C. § 1125 (a), pursuant to which this Court has jurisdiction under 15 U.S.C. §1121. This Court has jurisdiction over the subject matter of this action based upon 28 U.S.C. §§ 1331 and 1338(a), providing for federal question jurisdiction of trademark infringement actions and exclusive jurisdiction of trademark infringement actions in the U.S. district courts. This Court has jurisdiction over any remaining claims in this action pursuant to the doctrine of supplemental jurisdiction and 28 U.S.C. § 1367.

2. Plaintiff NuScience is informed and believes, and thereon alleges, that venue in this Court is proper under 28 U.S.C. § 1391(b) because the acts of misappropriation of trade secret, trademark infringement, unfair competition, false advertising, and intentional interference with prospective economic advantage alleged herein were engaged in within this judicial district.

PARTIES

3. Plaintiff NuScience is a corporation organized and existing under the laws of the State of California and having a principal place of business at 43102 Business Center Parkway, Lancaster, California 93535.

4. On information and belief, Defendant Henkel is an individual who currently resides at 1530 West 2nd Street, Davenport, Iowa 52802.

5. On information and belief, Defendant Deutrocell is a business entity of unknown form, created by Robert Henkel, having its principal place of business at 1548 West Hayes Street, Davenport Iowa 52802, and a mailing address of P.O. Box 2070, Davenport, Iowa 52809.

6. On information and belief, Defendant Deutrocell is an alter ego of Defendant Henkel. On information and belief, Defendant Deutrocell is not incorporated in any of the United States, nor has it been registered as any other business entity such as a Limited Liability Company or Limited Partnership. On information and belief, Defendant Deutrocell has never issued stock, has held no board meetings, and has kept no corporate minutes. On information and belief, Defendant Deutrocell has failed to observe the most basic of corporate formalities

7. On information and belief, Defendants have committed the acts alleged herein in this state and this judicial district.

**NUSCIENCE'S TRADE SECRET AND THE MISAPPROPRIATION
THEREOF**

8. Plaintiff, NuScience is, and has been for many years, in the business of researching, developing, and distributing oxygen based health and beauty products and other mineral supplements.

9. The primary product which NuScience develops and sells is known as CELLFOOD®. CELLFOOD® is the world's best selling oxygen and nutrient supplement, containing 78 minerals, 34 enzymes, and 17 amino

1 acids. CELLFOOD® uses a proprietary water-splitting technology to provide
2 a stream of bio-available oxygen in addition to 129 nutrients directly to cells.

3 10. The proprietary water-splitting technology and formula used in
4 CELLFOOD®, is one of NuScience's best kept trade secrets. NuScience is
5 the rightful owner of this trade secret and has taken reasonable measures to
6 maintain the trade secret in confidence and to protect it from disclosure to
7 competitors.

8 11. NuScience's trade secret is not generally known or available to
9 the public or to NuScience's competitors. Further, NuScience's trade secret is
10 not easily ascertainable or easily developed.

11 12. NuScience's trade secret has economic value in that it is the only
12 producer of this type of formula. NuScience's annual worldwide sales of its
13 products utilizing its trade secret are over \$230 million.

14 13. On information and belief, the trade secret formula was originally
15 developed by Everett Storey while he was an officer of Deutrel Laboratories,
16 Inc. Upon his demise, Deutrel Laboratories and all associated business was
17 willed to an individual Lois Ramm. Deutrel Laboratories, Inc. and the trade
18 secret were then purchased by an individual, Jerald Rhoten, from Lois Ramm
19 in 1991, according to a signed Purchase Agreement. Jerald Rhoten
20 subsequently assigned the trade secret to NuScience.

21 14. At the time of purchase of the trade secret by Jerald Rhoten, all
22 notes, files, memoranda, drawings, goodwill, experiments, tests, customer
23 lists, and other intangible assets (collectively, the "trade secret assets") were
24 also purchased from Lois Ramm.

25 15. According to a Secrecy Agreement signed and dated by Lois
26 Ramm in 1991, and the Purchase Agreement, Lois Ramm represented and
27 warranted to Jerald Rhoten that she was the sole owner of the trade secret and
28 trade secret assets, that at all times secrecy was maintained regarding the trade

1 secret and trade secret assets, and she agreed to protect and preserve the
2 confidentiality of the formula and the trade secrets and assets in the future.

3 16. Jerald Rhoten, and NuScience by assignment, have at all times
4 maintained the confidentiality of the trade secret and trade secret assets.
5 NuScience has developed its business around the proprietary trade secret
6 purchased from Lois Ramm and now used to produce CELLFOOD®.

7 17. On information and belief, in or around 2004, Lois Ramm's will
8 was probated. On information and belief, at that time, Lois Ramm's brother,
9 John Henkel, allegedly discovered drawings, memoranda, or other documents
10 that allegedly detailed the trade secret formula purchased from Lois Ramm.
11 John Henkel subsequently threatened Jerald Rhoten and NuScience that he
12 would sell the trade secret formula, or in some other way use the trade secret
13 formula for monetary gain unless Jerald Rhoten/NuScience paid him some
14 unknown sum.

15 18. In or around 2004, Jerald Rhoten and NuScience initiated
16 litigation against John Henkel for, amongst other things, misappropriation of
17 trade secrets, *Jerald D. Rhoten, et al. v. John Henkel, et al.*, Case No. 102283
18 in the Iowa District Court for Scott County (7th Judicial District).

19 19. That case resulted in a permanent restraining order and
20 injunction against John Henkel; to wit: John Henkel was "permanently
21 restrained, prohibited and enjoined from using, possessing, or controlling, and
22 from stating ... that he ... possess, controls, ...or has knowledge of the
23 ingredients, formula, ... or other technical data ... and/or the other trade
24 secrets of the Plaintiffs ... [He was] permanently enjoined ... from revealing,
25 communicating, or otherwise transferring to any person, any document,
26 drawing, design, ... that purports to have all or any part of the formula ... or
27 any of the Plaintiff's other trade secrets. ... [He was also to] immediately
28 destroy any and all existing documents, drawings, designs, ... that has or

1 purports to have any information concerning the ingredients, formula, recipe,
2 ... about ... "CELLFOOD®." A copy of this permanent injunction is attached
3 hereto as Exhibit 1.

4 20. On information and belief, Robert Henkel is the son of John
5 Henkel, the individual against whom the permanent restraining order and
6 injunction was entered.

7 21. On information and belief, Robert Henkel is, and has been at all
8 times since it was ordered, aware of the permanent injunction against John
9 Henkel.

10 22. Robert Henkel purports to be in possession of documents having
11 information concerning the ingredients and formula of the proprietary trade
12 secret owned by NuScience.

13 23. Robert Henkel has offered to sell the proprietary trade secret
14 formula and its product to third parties, including present customers of
15 NuScience.

16 24. On information and belief, Robert Henkel has used the
17 proprietary trade secret formula to produce a version of CELLFOOD®, which
18 Henkel calls Deutrocell. Like CELLFOOD®, Robert Henkel claims that
19 Deutrocell contains 78 minerals, 34 enzymes, 17 amino acids and states that it
20 is "cellular nutrition that provides 129 nutrients plus oxygen and hydrogen at
21 the cellular level" using water-splitting technology.

22 25. On information and belief, Robert Henkel has formed a business
23 entity which sells Deutrocell. This business entity is also called Deutrocell,
24 (for clarity purposes, the business entity will be referred to as "Defendant
25 Deutrocell"). Defendant Deutrocell offers to sell the product Deutrocell at
26 least in part over the Internet on an interactive website, www.deutrocell.com.
27 On information and belief, Defendant Deutrocell has made substantial sales of
28 its product Deutrocell in California, including this Judicial District.

26. On information and belief, Defendant Deutrocell is an alter ego of Defendant Henkel. On information and belief, Defendant Deutrocell is not incorporated in any of the United States, nor has it been registered as any other business entity such as a Limited Liability Company or Limited Partnership. On information and belief, Defendant Deutrocell has never issued stock, has held no board meetings, and has kept no corporate minutes. On information and belief, Defendant Deutrocell has failed to observe the most basic of corporate formalities.

27. Defendant Henkel and/or Defendant Deutrocell's use of NuScience's proprietary trade secret formula to make product Deutrocell amounts to misappropriation of NuScience's trade secret as they have done so knowing, or having reason to know, that knowledge of this trade secret was derived from or through a person who utilized improper means to acquire it, or acquired it under circumstances giving rise to a duty to maintain its secrecy.

NUSCIENCE'S TRADEMARKS AND INFRINGEMENT THEREOF

28. NuScience has acquired several federally registered trademarks which it uses in connection with its sale of CELLFOOD® and similar products.

29. On May 28, 2002, NuScience was granted U.S. Trademark Registration No. 2,573,852 ("the '852 mark") for "EVERETT STOREY®" in connection with dietary, nutritional, food, vitamin and mineral supplements for human consumption. A copy of this trademark registration is attached hereto as Exhibit 2. NuScience's EVERETT STOREY® mark is now incontestable.

30. On June 8, 2004, NuScience was granted U.S. Trademark Registration No. 2,851,039 ("the '039 mark") for "DEUTROSULFAZYME®" in connection with liquid nutritional

1 supplements for human consumption. A copy of this trademark is attached
2 hereto as Exhibit 3.

3 31. On July 29, 1997, NuScience was granted U.S. Trademark
4 Registration No. 2,083,802 ("the '802 mark") for "CELLFOOD®" in
5 connection with mineral supplements for human consumption. A copy of this
6 trademark registration is attached hereto as Exhibit 4. NuScience's
7 CELLFOOD® mark is now incontestable.

8 32. NuScience has spent at least \$1,000,000 over the last six years in
9 advertising, promotional activities, trade shows and conventions promoting its
10 CELLFOOD® products using the '852, '039, and '802 marks.

11 33. Customers identify mineral supplements for human consumption
12 sold under the '852, '039, and '802 marks as being the product of NuScience.

13 34. Customers rely upon the '852, '039, and '802 marks as indicative
14 of high quality mineral supplements.

15 35. In or around January 2008, NuScience became aware of
16 Defendants' marketing of their product Deutrocell. Defendants registered the
17 domain names www.evstorey.com and www.deutrocell.com in efforts to sell
18 their product Deutrocell.

19 36. Defendants' website www.deutrocell.com contains a webpage
20 stating that the product Deutrocell is "Uncle Ev's" original formula
21 underneath a photograph captioned "Everett Storey."

22 37. Defendants have sent emails to NuScience's customers stating
23 "Would you be interested in distributing EV STOREYS (sic) "ORIGINAL"
24 KITCHEN FORMULA (DEUTROCELL) ? (sic) Often imitated "NEVER"
25 duplicated. For more info please go to evstorey.com or deutrocell.com WE
26 "CELL" FOR LE\$\$."

27 38. Defendants' use of "Ev Storey," and "Everett Storey" in
28 connection with the sale of their product Deutrocell, a mineral supplement, is

1 infringement of NuScience's '852 mark and likely to cause confusion and lead
2 consumers to believe that it is sponsored by, affiliated with, or the agent of,
3 NuScience.

4 39. Defendants' use of "Deutrocell" in connection with the sale of
5 their product Deutrocell, a mineral supplement, is infringement of
6 NuScience's '039 mark and is likely to cause confusion and lead consumers to
7 believe that it is sponsored by, affiliated with, or the agent of, NuScience.

8 40. Defendants' use of "Deutrocell" and "WE 'CELL' FOR LESS"
9 in connection with the sale of their product Deutrocell, a mineral supplement,
10 is infringement of NuScience's '802 mark and is likely to cause confusion and
11 lead consumers to believe that it is sponsored by, affiliated with, or the agent
12 of, NuScience

13 41. Such actions by Defendants further constitute unfair competition.

14 **FALSE ADVERTISING BY DEFENDANTS**

15 42. To the extent that Defendants have not used NuScience's
16 proprietary trade secret formula in producing its product, Defendants have
17 committed false advertising, injuring NuScience.

18 43. Defendants state on their website www.deutrocell.com and in
19 emails sent to NuScience's customers that they possess the original formula
20 created by Everett Storey and are willing to sell it.

21 44. Defendants state in their website www.deutrocell.com and in
22 emails sent to NuScience's customers that they product they sell, product
23 Deutrocell, is made according to Everett Storey's formula and ingredients.

24 45. The original formula created by Everett Storey is the trade secret
25 of NuScience.

26 46. If Defendants are not using NuScience's trade secret to create
27 Deutrocell, then Defendants' statements misrepresent the Defendants' goods.

28

1 47. Defendants offer their product Deutrocell in interstate commerce
2 through the commercial advertising of their website and they offer to sell their
3 product Deutrocell across state lines through email.

4 48. NuScience has been harmed by Defendant's false statements in
5 loss sales and goodwill.

6 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS**

7 **ADVANTAGE**

8 49. Defendants' emails to NuScience's customers offering to sell the
9 product Deutrocell and/or the formula that creates it, interferes with
10 NuScience's prospective business.

11 50. Defendants know, or should know, that Lumina Health Products,
12 Inc. is a customer and distributor of CELLFOOD® manufactured by
13 NuScience.

14 51. Defendants have offered to sell the products Deutrocell and/or the
15 formula that creates it to Lumina Health Products, Inc. via email in an effort to
16 disrupt the business relationship between NuScience and Lumina Health
17 Products, Inc.

18 52. Defendants' emails to Lumina Health Products, Inc. have
19 disrupted the business relationship enjoyed by NuScience, and NuScience has
20 been damaged by this disruption.

21 **FIRST CAUSE OF ACTION**

22 **(Trade Secret Misappropriation – Cal. Civ. Code § 3426, et seq.)**

23 53. NuScience incorporates by reference paragraphs 1-52 above as if
24 fully set forth herein.

25 54. NuScience alleges that Defendants misappropriated trade secrets
26 from NuScience without its consent or permission in violation of Cal. Civ.
27 Code § 3426. In addition, NuScience seeks injunctive relief pursuant to Cal.
28 Civ. Code §§ 3422 and 3426.2.

1 55. NuScience's trade secrets have independent economic value and
2 merit legal protection in that: (1) they have never been known to the general
3 public or to others who could derive economic value from them, (2) they have
4 never been disclosed to NuScience's competitors, and (3) they are necessary
5 for NuScience to conduct its business effectively and profitably.

6 56. At all times, NuScience and its prior owners of the trade secrets
7 took reasonable efforts under the circumstances to preserve the confidentiality
8 of NuScience's trade secrets.

9 57. Defendants allege to possess NuScience's trade secrets, namely
10 the ingredients and formula for forming CELLFOOD®, and have used
11 NuScience's trade secrets to produce their product Deutrocell.

12 58. Defendants knew, or should have known, that at the time they
13 used the trade secret to manufacture their product Deutrocell, their knowledge
14 of the trade secret was either derived through a person who had utilized
15 improper means to acquire it, or acquired under circumstances giving rise to a
16 duty to maintain its secrecy. For example, Defendant Henkel knew or should
17 have known about John Henkel's (Defendant Henkel's father) permanent
18 injunction against disclosure or use of NuScience's trade secret before
19 Defendant Henkel's acquisition and use thereof.

20 59. Defendants know that misappropriation, acquisition, use or
21 disclosure of NuScience's trade secret by, to, or for the benefit of any party
22 other than NuScience is wrongful.

23 60. Defendants have offered to disclose some or all of NuScience's
24 trade secrets and have used NuScience's trade secrets to produce their product
25 Deutrocell.

26 61. Defendants' actual and/or threatened misappropriation has
27 proximately caused irreparable harm to NuScience. NuScience will continue
28 to suffer irreparable harm that cannot be adequately remedied at law unless

1 and until Defendants, their officers, agents, employees, heirs, and assigns are
2 enjoined from engaging in any such further acts of actual and/or threatened
3 misappropriation.

4 62. As a proximate cause of Defendants actual and/or threatened
5 misappropriation of NuScience's trade secrets, NuScience has been damaged
6 by at least \$100,000 or an amount to be determined at trial.

7 63. As a further proximate cause of Defendants actual and/or
8 threatened misappropriation of NuScience's trade secrets, Defendants have
9 been unjustly enriched by their wrongful acts at the expense of NuScience.
10 These acts have unjustly enriched Defendants by an amount presently
11 unknown, but upon information and belief, in excess of the jurisdictional
12 minimum, to which amount NuScience is rightfully entitled.

13 64. Defendants actions as alleged above were undertaken in bad faith,
14 oppressively and maliciously, such that NuScience is entitled to an award of
15 exemplary damages in an amount sufficient to punish such actions and to deter
16 such actions by Defendants or others in the future, pursuant to Cal. Civ. Code
17 § 3426.3.

18 65. Defendants actions as alleged above were undertaken in bad faith,
19 oppressively and maliciously, such that NuScience is entitled to its attorneys'
20 fees, pursuant to Cal. Civ. Code § 3426.4.

21 **SECOND CAUSE OF ACTION**

22 **(Trademark Infringement – 15 U.S.C. §1125(a))**

23 66. NuScience incorporates by reference paragraphs 1 through 65
24 above as if fully set forth herein.

25 67. NuScience owns U.S. Trademark Registration No. 2,573,852
26 ("the '852 mark") for the term "EVERETT STOREY®" for use in marketing
27 and selling dietary, nutritional, food, vitamin and mineral supplements for
28 human consumption. The '852 mark is now uncontestable.

1 68. Defendants are not licensed or otherwise authorized to use the
2 '852 mark.

3 69. Defendants have used terms "Ev Storey" and "Everett Storey" in
4 marketing and selling dietary, nutritional, food, vitamin or mineral
5 supplements for human consumption.

6 70. Defendants knew or had reason to know of NuScience'
7 ownership of the '852 mark.

8 71. Defendant's uses of the above terms are likely to cause confusion
9 and the mistaken belief that Defendants are authorized agents of NuScience as
10 they are confusingly similar to NuScience's '852 mark.

11 72. Defendants' conduct constitutes trademark infringement or false
12 designation of origin in violation of Section 43(a) of the Lanham Act, 15
13 U.S.C. § 1125 (a).

14 73. Defendants' conduct is willful and in bad faith.

15 74. Defendants will continue their infringing conduct unless enjoined
16 by this Court.

17 75. Defendants' infringement has caused and is causing irreparable
18 harm to NuScience, for which NuScience has no adequate remedy at law.

19 76. NuScience has been damaged by defendants' infringement and,
20 unless and until an injunction issues, will continue to be damaged in its
21 business, reputation, and property in an amount yet to be determined, but at
22 least \$100,000.

23 77. As a direct and proximate result of Defendants' actions,
24 NuScience is entitled to an award of three times its actual damages, the profits
25 of defendant, and reasonable attorneys fees and costs pursuant to 15 U.S.C. §§
26 1117 and 1125.

27 **THIRD CAUSE OF ACTION**

28 **(Trademark Infringement – 15 U.S.C. §1125(a))**

1 78. NuScience incorporates by reference paragraphs 1 through 77
2 above as if fully set forth herein.

3 79. NuScience owns U.S. Trademark Registration No. 2,851,039
4 (“the ‘039 mark”) for “DEUTROSULFAZYME®” in connection with liquid
5 nutritional supplements for human consumption.

6 80. Defendants are not licensed or otherwise authorized to use the
7 ‘852 mark.

8 81. Defendants have used the term “Deutrocell” in marketing and
9 selling mineral supplements for human consumption.

10 82. Defendants knew or had reason to know of NuScience’
11 ownership of the ‘039 mark.

12 83. Defendants’ use of the above term is likely to cause confusion
13 and the mistaken belief that Defendants are authorized agents of NuScience as
14 they are confusingly similar to NuScience’s ‘039 mark.

15 84. Defendants’ conduct constitutes trademark infringement or false
16 designation of origin in violation of Section 43(a) of the Lanham Act, 15
17 U.S.C. § 1125 (a).

18 85. Defendants’ conduct is willful and in bad faith.

19 86. Defendants will continue their infringing conduct unless enjoined
20 by this Court.

21 87. Defendants’ infringement has caused and is causing irreparable
22 harm to NuScience, for which NuScience has no adequate remedy at law.

23 88. NuScience has been damaged by defendants’ infringement and,
24 unless and until an injunction issues, will continue to be damaged in its
25 business, reputation, and property in an amount yet to be determined, but at
26 least \$100,000.

27 89. As a direct and proximate result of Defendants’ actions,
28 NuScience is entitled to an award of three times its actual damages, the profits

1 of defendant, and reasonable attorneys fees and costs pursuant to 15 U.S.C. §§
2 1117 and 1125.

3 **FOURTH CAUSE OF ACTION**

4 **(Trademark Infringement – 15 U.S.C. § 1125(a))**

5 90. NuScience incorporates by reference paragraphs 1 through 89
6 above as if fully set forth herein.

7 91. NuScience owns U.S. Trademark Registration No. 2,083,802
8 (“the ‘802 mark”) for “CELLFOOD®” in connection with mineral
9 supplements for human consumption. NuScience’s CELLFOOD® mark is
10 now incontestable.

11 92. Defendants are not licensed or otherwise authorized to use the
12 ‘852 mark.

13 93. Defendants have used the terms “We CELL for le\$\$” and
14 “Deutrocell” in marketing and selling mineral supplements for human
15 consumption.

16 94. Defendants knew or had reason to know of NuScience’s
17 ownership of the ‘802 mark.

18 95. Defendants’ uses of the above terms are likely to cause confusion
19 and the mistaken belief that Defendants are authorized agents of NuScience as
20 they are confusingly similar to NuScience’s ‘802 mark.

21 96. Defendants’ conduct constitutes trademark infringement or false
22 designation of origin in violation of Section 43(a) of the Lanham Act, 15
23 U.S.C. § 1125 (a).

24 97. Defendants’ conduct is willful and in bad faith.

25 98. Defendants will continue their infringing conduct unless enjoined
26 by this Court.

27 99. Defendants’ infringement has caused and is causing irreparable
28 harm to NuScience, for which NuScience has no adequate remedy at law.

1 100. NuScience has been damaged by defendants' infringement and,
2 unless and until an injunction issues, will continue to be damaged in its
3 business, reputation, and property in an amount yet to be determined, but at
4 least \$100,000.

5 101. As a direct and proximate result of Defendants' actions,
6 NuScience is entitled to an award of three times its actual damages, the profits
7 of defendant, and reasonable attorneys fees and costs pursuant to 15 U.S.C. §§
8 1117 and 1125.

9 **FIFTH CAUSE OF ACTION**

10 **(Unfair Competition – Cal. Bus. & Prof. Code § 17200 et. seq.)**

11 102. NuScience repeats, realleges, and incorporates by reference, as
12 though fully set forth herein, the allegations set forth in paragraphs 1 through
13 101 above.

14 103. The acts of defendant, including but not limited to trademark
15 infringement violate Section 17200 et seq. of the California Business and
16 Professions Code, which prohibits any unlawful, unfair, or fraudulent business
17 practices or act, and any unfair, deceptive, false, or misleading advertising.

18 104. Defendant will continue its unfair competition unless enjoined by
19 this Court.

20 105. Defendant's unfair competition has caused and is causing
21 irreparable harm to plaintiff, for which plaintiff has no adequate remedy at
22 law.

23 **SIXTH CAUSE OF ACTION**

24 **(False Advertising – 15 U.S.C. § 1125(a))**

25 106. NuScience incorporates and realleges Paragraphs 1-105 above,
26 as if fully set forth herein.

27 107. NuScience alleges that if Defendants have not misappropriated its
28 trade secrets, Defendants have disseminated advertising materials which are

1 untrue and/or misleading, and have used a false designation of origin as to
2 their product Deutrocell in violation of Section 43(a) of the Lanham Act, 15
3 U.S.C. § 1125(a).

4 108. Among other things, Defendants have marketed and distributed
5 their Deutrocell product interstate, both on the Internet and in emails to
6 customers, stating that Deutrocell is “Ev Storey’s original formula.” Everett
7 Storey’s original formula is NuScience’s trade secret, which if they have not
8 misappropriated, Defendants do not have.

9 109. Defendants’ statement then is a false statement of fact about their
10 product which misrepresents the nature and qualities of their product
11 Deutrocell.

12 110. Because of Defendants’ false statements, consumers are likely to
13 be deceived into believing that Deutrocell is Everett Storey’s original formula
14 and purchase Deutrocell accordingly.

15 111. NuScience is harmed by Defendants’ false statements because (1)
16 consumers, being deceived, purchase Deutrocell instead of NuScience’s
17 CELLFOOD®, which is the Everett Storey’s original formula, and/or (2)
18 consumers try Deutrocell and afterwards doubt the effectiveness of Everett
19 Storey’s original formula as found in Deutrocell and do not purchase
20 NuScience’s CELLFOOD®, believing it to be the same formula.

21 112. On information and belief, Defendants acts complained of herein
22 have been committed willfully and with knowledge that such conduct falsely
23 describes or represents Deutrocell, with the intent to cause confusion, and
24 mistake, or to deceive the public.

25 113. On information and belief, Defendants threaten to continue the
26 conduct complained of herein, and unless enjoined, will continue such conduct
27 causing irreparable harm to NuScience for which NuScience has no adequate
28 remedy at law. NuScience has also suffered damages for this conduct in an

1 amount yet to be determined, but upon information and belief is at least
2 \$100,000.

3 114. As a direct and proximate result of Defendants conduct,
4 NuScience is entitled to damages and a preliminary and permanent injunction
5 enjoining and restraining Defendants and their respective agents, assigns, and
6 heirs from engaging in the aforesaid acts.

7 **SEVENTH CAUSE OF ACTION**

8 **(Intentional Interference with Prospective Economic Advantage)**

9 115. NuScience incorporates and realleges Paragraphs 1-114 above, as
10 if fully set forth herein.

11 116. NuScience alleges that Defendants wrongfully, unjustifiably, and
12 intentionally interfered with NuScience's business relations and prospective
13 economic advantage in violation of California common law.

14 117. NuScience has an economic relationship with Lumina Health
15 Products, Inc. and with prospective customers with whom Defendants is or
16 was in the process of negotiating agreements or relationships. These
17 relationships entail the probability of future economic benefit and advantage to
18 NuScience in that these customers and potential customers provide NuScience
19 with the opportunity to distribute their CELLFOOD® products on a
20 worldwide scale and who will endorse and promote NuScience to others
21 through their accounts of their positive experience with NuScience.

22 118. Defendants, at all times, have been aware of these economic
23 relationships.

24 119. On information and belief, NuScience alleges that Defendants
25 have intentionally engaged in conduct designed to interfere with or disrupt
26 these economic relationships, including using NuScience's trade secrets and
27 other malicious aforementioned acts to solicit these customers and potential
28 customers, and inducing or attempting to induce these customers and potential

1 customers to stop doing business with NuScience by falsely representing to
2 these customers and potential customers that NuScience does not possess
3 Everett Storey's original formula, NuScience is not making the formula
4 correctly, and that Defendants' product Deutrocell is the same, or nearly the
5 same as CELLFOOD®, and is more competitively priced. This conduct by
6 Defendants is wrongful independent from the acts of interference themselves.

7 120. On information and belief, NuScience alleges that this conduct by
8 Defendants has interfered with or disrupted NuScience's economic
9 relationships with its customers and potential customers so that existing and
10 potential business created by NuScience's solicitation, promotion, and other
11 efforts have been diverted to Defendants, NuScience's customer base has been
12 eroded, and NuScience's reputation and goodwill have been injured.

13 121. As a proximate result of Defendants' actions, Defendants have
14 damaged NuScience in an amount not presently ascertainable, but upon
15 information and belief, is to be at least \$100,000.

16 122. On information and belief, NuScience alleges that Defendants'
17 actions as alleged were undertaken in bad faith, oppressively, and maliciously,
18 such that NuScience is entitled to an award of exemplary damages in an
19 amount sufficient to punish and deter such conduct by Defendants in the future
20 pursuant to Cal. Civ. Code § 3294.

21 123. On information and belief, NuScience alleges that Defendants
22 threaten to and unless restrained, will continue to utilize NuScience's trade
23 secrets to NuScience's great and irreparable injury, for which damages would
24 not afford adequate relief, in that they would not completely compensate
25 NuScience for the injury to its reputation and goodwill.

PRAYER FOR RELIEF

WHEREFORE, NuScience prays for relief and judgment from this Court:

a. That the Court enter judgment in favor of NuScience and against Defendants;

b. That Defendants and their agents, servants, employees, representatives, attorneys, related companies, successors, assigns, or heirs be preliminary and permanently enjoined from possessing, using, selling, offering to sell, transferring, controlling, communicating, providing, revealing, giving away, marketing, publishing, advertising, or otherwise transferring to any person in any manner any of NuScience's trade secrets or trade secret assets, including all or any part of the ingredients (except water), formula, recipe, know-how, technical data, secret processes, mixing formula, specifications or other information, knowledge or data contained therein;

c. That Defendants and their agents, servants, employees, representatives, attorneys, related companies, successors, assigns, or heirs be preliminary and permanently enjoined from stating, telling, representing or claiming to third persons that it knows, possess, controls, is able to use, or has knowledge of the ingredients, formula, recipe, know-how, specifications, mixing formula, secret processes, or other technical data of any of NuScience's trade secrets or Everett Storey's original formula;

d. That Defendants and their agents, servants, employees, representatives, attorneys, related companies, successors, assigns, or heirs be preliminary and permanently enjoined from creating, producing, making, providing, using, revealing, communicating or otherwise transferring to any person in any manner any document, drawing, design plan, proposal, note, file, data, memorandum, photograph, or other tangible recordable, digital,

1 video, or other decipherable information that purports to have all or any part of
2 the formula, ingredient, recipe, mixing formula, know-how, secret process,
3 specification, data or other technical information of NuScience's trade secret,
4 CELLFOOD®, or Everett Storey's original formula;

5 e. That Defendants immediately transfer to NuScience any and all
6 documents, drawings, designs, plans, proposals, notes, files, memoranda, and
7 other recordings of information however recorded in tangible, readable, or
8 other decipherable form, including electronic, digital, written, photographic, or
9 other medium that has or purports to have any information concerning the
10 ingredients, formula, recipe, specification, know-how, technical data, mixing
11 formula, and other information about NuScience's trade secret or Everett
12 Storey's original formula and all products made according to such materials;

13 f. That Defendants be preliminary and permanently enjoined from
14 using the "EVERETT STOREY ®," "DEUTROSULFAZYME ®," and
15 "CELLFOOD®" trademarks, and all marks confusingly similar thereto in
16 conjunction with the promotion, marketing, offering for sale, or sale of
17 mineral supplements for human consumption;

18 g. The Defendants be preliminary and permanently enjoined from
19 using the terms "Ev Storey" and "Deutrocell" in conjunction with the
20 promotion, marketing, offering for sale, or sale of mineral supplements for
21 human consumption;

22 h. That defendant Defendants be enjoined from engaging in unfair
23 competition;

24 i. That NuScience recover compensatory, incidental, and
25 consequential damages for Defendant's conduct in an amount to be proven at
26 trial, but at least \$100,000, together with prejudgment interest thereon at the
27 maximum legal rate;

28

1 j. That Defendants be ordered to pay punitive and exemplary
2 damages in an amount to be proven at trial, together with prejudgment interest
3 thereon at the maximum legal rate;

4 k. That NuScience recover treble damages for trademark
5 infringement;

6 l. That NuScience recover its reasonable attorney's fees;

7 m. That NuScience recover all unjust enrichment of Defendants;

8 n. That the Court award NuScience its costs of suit incurred herein;

9 and

10 o. For such other and further relief as this Court deems proper and
11 just.

12
13 Dated: April 22, 2008

Respectfully submitted,

14 PILLSBURY WINTHROP SHAW
15 PITTMAN LLP

16
17 By: 

Richard H. Zartlen

18 Attorneys for Plaintiff
19 NUSCIENCE CORPORATION
20
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DEMAND FOR JURY TRIAL

Pursuant to FED. R. CIV. P. 38(b), Plaintiff NUSCIENCE CORPORATION hereby demands a jury trial of all claims against Defendants.

Dated: April 22, 2008

Respectfully submitted,

PILLSBURY WINTHROP SHAW
PITTMAN LLP

By:


Richard H. Zaitlen

Attorneys for Plaintiff
NUSCIENCE CORPORATION

EXHIBIT 1

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

JERALD D RHOTEN, NU SCIENCE CORP
AND DEUTREL INDUSTRIES INC
Plaintiff/Petitioner

vs.

JOHN HENKEL
Defendant/Respondent

Case No. 102283

☒ PERMANENT INJUNCTION

☐ TEMPORARY INJUNCTION

☒ WITHOUT BOND

☐ WITH BOND IN AMOUNT OF

\$ _____

TO THE SHERIFF OF SCOTT COUNTY, IOWA:

YOU SHALL SERVE JOHN HENKEL

AT UNKNOWN

TO: JOHN HENKEL

BY ORDER OF THIS COURT YOU ARE STRICTLY ENJOINED AND RESTRAINED:

☒ AS STATED IN THE ATTACHED COURT ORDER.

☐ AS FOLLOWS:

***SEE ATTACHED ORDER

I hereby certify that the foregoing is a true and correct copy of the original on file and of record in my office. Given under my hand and the Seal of the District Court of Iowa in and for Scott County this _____ day of _____ 2005.

By JULIE C CARLIN Deputy Clerk

Date Issued: 27 JANUARY 2005

JULIE C CARLIN

CLERK, IOWA DISTRICT COURT

By [Signature]

Deputy

RETURN OF SERVICE

Date Received _____

Date Served _____

Who Served _____

Address Served _____

Fees _____

Mileage _____

Total _____

EXHIBIT 1
PAGE 24

County Sheriff
COUNTY IOWA

FILED

05 JAN 27 AM 8:57

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

CLERK OF DISTRICT COURT
SCOTT COUNTY, IOWA

JERALD D. RHOTEN, NU SCIENCE)
CORPORATION and DEUTREL)
INDUSTRIES, INC.,)

CASE NO. 102283

Plaintiffs,)

vs.)

JOHN HENKEL and LOIS RAMM)
ESTATE,)

ORDER FOR PERMANENT
RESTRAINING ORDER AND
INJUNCTION

Defendants.)

UNCONTESTED

NOW on the 27th day of January, 2005, the Petition for Restraining Order, Temporary and Permanent Injunction having been filed, and the Application for TRO and Temporary Injunction during the pendency of this action having been previously presented to the Court and approved by this Court on April 16, 2004 and again approved by Order of this Court on September 28, 2004, and the Court being advised that the parties have agreed that this matter may be resolved by making permanent the injunction against John Henkel, and that the parties request that the injunction remain as the permanent Order of this Court. The counterclaim of the Lois Ramm Estate is dismissed and the claim against the Lois Ramm Estate is dismissed. The Court is advised by the parties that the parties have agreed that this matter will be resolved by this Order.

IT IS THEREFORE ORDERED that John Henkel is permanently restrained, prohibited and enjoined from using, possessing or controlling, and from stating, telling, representing or claiming to other persons that he knows, possesses, controls, able to use, or has knowledge of the ingredients, formula, recipe, know-how, specifications, mixing formula, secret processes or other technical data of "Open-All" or "Cellfood" and/or the other trade secrets of the Plaintiffs, or any of them.

IT IS FURTHER ORDERED that John Henkel is permanently restrained, prohibited and enjoined from directly or indirectly, actually or attempting to, communicating, providing, telling, revealing, giving away, selling, marketing, advertising, publishing, disclosing or otherwise transferring to any person, in any manner, all or any part of the ingredients (except water), formula, recipe, know-how, technical data, secret processes, mixing formula, specifications or other information, knowledge or data that he may have or come into possession of concerning "Open-All" and "Cellfood", or any part or derivative thereof (except water). IT IS ORDERED that John Henkel is permanently prohibited from revealing, disclosing, selling, using, publishing, communicating or otherwise transferring, and/or, or any other trade secret of the Plaintiffs or any of them.

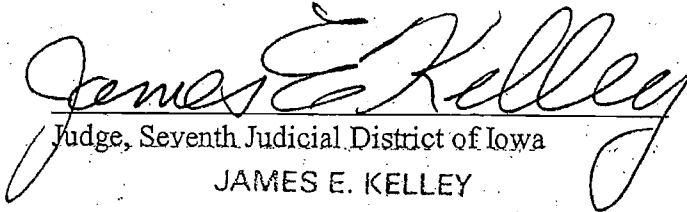
IT IS FURTHER ORDERED that John Henkel is permanently enjoined, restrained and prohibited from creating, producing, making, providing, using, revealing, communicating, or otherwise transferring to any person, any document, drawing, design, plan, proposal, note, file, data, memorandum, photograph, or other tangible or recordable, digital, video or other decipherable information that purports to have all or any part of the formula, ingredient, recipe, mixing formula, know-how, secret process, specification, data or other technical information of "Open-All" or "Cellfood" or any of the Plaintiff's other trade secrets.

IT IS FURTHER ORDERED that John Henkel will immediately destroy any and all existing documents, drawings, designs, plans, proposals, notes, files, memorandums, and other recordings of information however recorded in tangible, readable or other or decipherable form, including electronic, digital, written, photographic or other medium that has or purports to have any information concerning the ingredients, formula, recipe, specification, know-how, technical data, mixing formula and other information about "Open-All" or "Cellfood". John Henkel will not, directly or indirectly, communicate orally or in written, electronic or other means and he will

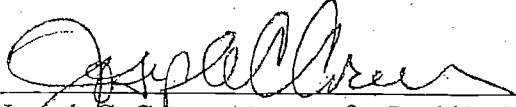
not create, make or produce any document or tangible thing that contains any of said information.

A violation of this Order or threatened violation of this Order, upon further application to this Court by the Plaintiff or any of them, after further Court hearing thereon may cause John Henkel to be subject to monetary sanctions for violation of this Order as may hereinafter be deemed appropriate by the Court, after notice and hearing thereon.

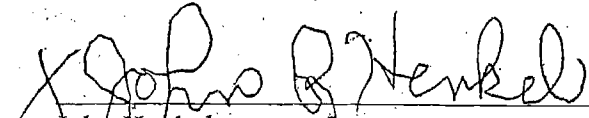
IT IS FURTHER ORDERED that all parties will pay their own costs and attorneys fees, and that the c bond (or cash bond in lieu thereof) posted by the Plaintiff is released and returned by the Clerk of Court to the Plaintiff's attorneys trust account.


Judge, Seventh Judicial District of Iowa
JAMES E. KELLEY

Approved as to form:


Joseph C. Green, Attorney for Jerald D. Rhoten,
Nu Science Corporation and Deutrel Industries, Inc.

N/A
Joseph Bitter, Attorney for Lois Ramm Estate


John Henkel

In The Iowa District Court for Scott County

Case Name _____

Case No. 102283Notice received this date 02/02/2005

STATE of IOWA)

Scott County)

Return of Service

Type of Service
Code

- ☒ Personal ①
☐ Dwelling/Substitute 2
☐ Hotel, Boarding/Rooming House 3
☐ Corporation/Association 4
☐ Official (State, County, City) 5
☐ Spouse away from Residence 6
☐ Other _____ 7

I certify that I served a copy of:

- ☐ Petition and Original Notice
☐ Modification/Application and Notice
☐ Order to Show Cause

- ☒ Order Filed Injunction
☐ Writ _____
☐ Other _____
☐ Subpoena _____

Served Person(s):

Type Code

<u>JOHN HENKEL</u> (name)	at	<u>1530 W 2ND ST, DAVENPORT</u> (address)	on	<u>02/02/2005 14:20</u> (date Time)	[/]
_____	at	_____	on	_____	[]
_____	at	_____	on	_____	[]
_____	at	_____	on	_____	[]
_____	at	_____	on	_____	[]

Served Substitute:

_____ by serving _____
 (name) (name)

at _____ on _____, (a person residing therein who was then at least 18 years old
 (address) (date Time)

OR spouse away from residence). (strike non-applicable part.)

Served Business:

_____ by serving _____
 (Company/Government Unit Name) (name)

_____, on _____, at _____
 (title) (date time) (address)

Notes:

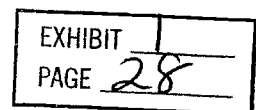
Fees

Service . . . \$ 15.00
 Copies . . . \$ 0.50
 Mileage . . . \$ 1.00
 Total . . . \$ 16.50

Scott County Sheriff Dennis Conard

By 0037 - DEP. DARRIN TANNER
 (Deputy Sheriff)

Note: Copy of Original Notice, if served, must be attached to this form.



17836

EXHIBIT 2

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,573,852

Registered May 28, 2002

**TRADEMARK
PRINCIPAL REGISTER**

EVERETT STOREY

RHOTEN, JERALD (UNITED STATES CITIZEN),
DBA DEUTREL INDUSTRIES
43102 BUSINESS CENTER PARKWAY
LANCASTER, CA 93535

FOR: DIETARY, NUTRITIONAL, FOOD, VITA-
MIN AND MINERAL SUPPLEMENTS FOR HUMAN
CONSUMPTION, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46,
51 AND 52).

FIRST USE 1-1-1982; IN COMMERCE 2-1-1996.

THE NAME "EVERETT STOREY" DOES NOT
IDENTIFY A LIVING INDIVIDUAL.

SER. NO. 78-049,374, FILED 2-20-2001.

CAROLINE WOOD, EXAMINING ATTORNEY

EXHIBIT 3

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,851,039

Registered June 8, 2004

**TRADEMARK
PRINCIPAL REGISTER**

DEUTROSULFAZYME

NU SCIENCE CORPORATION (CALIFORNIA
CORPORATION)
43102 BUSINESS CENTER PARKWAY
LANCASTER, CA 93535

FIRST USE 1-1-1969; IN COMMERCE 1-1-1997.

SER. NO. 78-273,862, FILED 7-14-2003.

FOR: LIQUID NUTRITIONAL SUPPLEMENT
FOR HUMAN CONSUMPTION, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

RICHARD A. STRASER, EXAMINING ATTORNEY

EXHIBIT 4

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,083,802

United States Patent and Trademark Office

Registered July 29, 1997

**TRADEMARK
PRINCIPAL REGISTER**

CELLFOOD

RHOTEN, LARRY J. (UNITED STATES CITI-
ZEN), DBA NU SCIENCE CORP.
42541 N. 8TH ST. EAST
LANCASTER, CA 93535

FIRST USE 2-1-1996; IN COMMERCE
2-1-1996.

SER. NO. 75-137,992, FILED 7-22-1996.

FOR: MINERAL SUPPLEMENTS FOR
HUMAN CONSUMPTION, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

ANNA CALDERON, EXAMINING ATTORNEY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Gary A. Feess and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV08 - 2661 GAF (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

RICHARD H. ZAITLEN #63283
 STEPHEN BYERS #223330
 PILLSBURY WINTHROP SHAW PITTMAN LLP
 725 South Figueroa Street, Suite 2800
 Los Angeles, CA 90017-5406
 Telephone: (213) 488-7100
 Facsimile: (213) 629-1033
 email: richard.zaitlen@pillsburylaw.com
 email: steve.byers@pillsburylaw.com

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

NUSCIENCE CORPORATION, a California
 corporation,

PLAINTIFF(S)

v.

ROBERT HENKEL, an individual, and ROBERT
 HENKEL d/b/a DEUTROCELL, a business entity of
 unknown form,

DEFENDANT(S).

CASE NUMBER

CV 08-02661

GAF (FFMx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
 Richard H. Zaitlen, Esq./Stephen Byers, Esq., whose address is:
 Pillsbury Winthrop Shaw Pittman LLP
 725 South Figueroa Street, Suite 2800
 Los Angeles, CA 90017-5406

an answer to the ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim
 which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
 of the day of service. If you fail to do so, judgement by default will be taken against you for the relief
 demanded in the complaint.

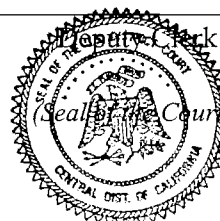
Clerk, U.S. District Court

APR 23 2008

Dated: _____

By: _____

LA'REE HORN



1192

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I (a) PLAINTIFFS** (Check box if you are representing yourself ☐)
NUSCIENCE CORPORATION, a California corporation,**(b)** County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):**(c)** Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
RICHARD H. ZAITLEN #63283/STEPHEN BYERS #223330
PILLSBURY WINTHROP SHAW PITTMAN LLP
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Tel.: (213) 488-7100**DEFENDANTS**
ROBERT HENKEL, an individual, and ROBERT HENKEL d/b/a
DEUTROCELL, a business entity of unknown form,

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐
- 1 U.S. Government Plaintiff
- ☒
- 3 Federal Question (U.S. Government Not a Party)
-
- ☐
- 2 U.S. Government Defendant
- ☐
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒
- 1 Original Proceeding
- ☐
- 2 Removed from State Court
- ☐
- 3 Remanded from Appellate Court
- ☐
- 4 Reinstated or Reopened
- ☐
- 5 Transferred from another district (specify):
- ☐
- 6 Multi District Litigation
- ☐
- 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION under F.R.C.P. 23:** ☐ Yes ☒ No**MONEY DEMANDED IN COMPLAINT:** \$ Unspecified**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. Section 1125(a) - Trademark Infringement, False Advertising

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities /Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY		<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> 865 RSI(405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County, California

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).☐ Check here if the U.S. government, its agencies or employees is a named defendant.

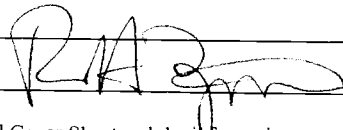
Iowa

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles County, California

X. SIGNATURE OF ATTORNEY (OR PRO PER):



Date 4/22/2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))